

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 JOHNNY JONES, et al.,

4 Plaintiffs,

5 v.

6 RIVERA, et al.,

7 Defendants.
8

Case No. 2:21-cv-01232-JAD-VCF

ORDER

9 **I. DISCUSSION**

10 Plaintiff, who is incarcerated in the custody of the Nevada Department of
11 Corrections, has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983, and a
12 motion for a preliminary injunction and temporary restraining order. (ECF Nos. 1-1, 1-2.)
13 However, Plaintiff has not paid the \$402 filing fee for civil cases or filed an application to
14 proceed *in forma pauperis*. Plaintiff filed a declaration stating that he does not qualify for
15 *in forma pauperis* status because he has \$450 in his inmate account. (ECF No. 1-3.)

16 Plaintiff has now also filed a motion to excuse the lack of a filing fee or an
17 application to proceed *in forma pauperis*. (ECF No. 4.) In his motion, Plaintiff again states
18 that he does not qualify for *in forma pauperis* status and that it would take many weeks
19 or months to process a financial certificate to accompany an application to proceed *in*
20 *forma pauperis*. (*Id.*)

21 Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, an inmate seeking to begin
22 a civil action in this Court may apply to proceed *in forma pauperis* in order to file the action
23 without prepaying the full \$402 filing fee. An inmate may also begin a civil action by
24 paying the full \$402 civil filing fee. If, as Plaintiff states, he does not qualify to proceed *in*
25 *forma pauperis*, he must pay the full \$402 filing fee to begin this action.

26 The Court cannot consider Plaintiff's complaint, or his motion for a preliminary
27 injunction and temporary restraining order, until Plaintiff either pays the \$402 filing fee in
28 full or files a complete application to proceed *in forma pauperis*, showing that he qualifies

1 for *in forma pauperis* status. Plaintiff's motion to excuse his failure to pay the filing fee or
2 file an application to proceed *in forma pauperis* (ECF No. 4) is denied.

3 Although Plaintiff states that he does not qualify to proceed *in forma pauperis*, the
4 Court notes that to apply for *in forma pauperis* status, an inmate must submit all three of
5 the following documents to the Court:

6 (1) a completed **Application to Proceed in Forma Pauperis for Inmate**, this
7 Court's approved form (i.e. pages 1 through 3 with the inmate's two signatures on
8 page 3),

9 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
10 official (i.e. page 4 of this Court's approved form), and

11 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
12 **previous six-month period.**

13 The Court will grant Plaintiff a **one-time** opportunity to file a fully complete
14 application to proceed *in forma pauperis* containing all three of the required documents,
15 or in the alternative, pay the full \$402 filing fee for this action on or before **September 7,**
16 **2021**. Absent unusual circumstances, the Court will not grant any further extensions of
17 time.

18 If Plaintiff is unable to file a fully complete application to proceed *in forma pauperis*
19 with all three required documents or pay the full \$402 filing fee on or before **September**
20 **7, 2021**, this case will be subject to dismissal without prejudice for Plaintiff to file a new
21 case with the Court when Plaintiff is either able to acquire all three of the documents
22 needed to file a fully complete application to proceed *in forma pauperis* or pays the full
23 \$402 filing fee.

24 A dismissal without prejudice means Plaintiff does not give up the right to refile the
25 case with the Court, under a new case number, when Plaintiff has all three documents
26 needed to submit with an application to proceed *in forma pauperis*. Alternatively, Plaintiff
27 may choose not to file an application to proceed *in forma pauperis* and instead pay the
28 full filing fee of \$402 on or before **September 7, 2021** to proceed with this case.

1 The Court will retain Plaintiff's civil rights complaint (ECF No. 1-1), but the Court
2 will not file the complaint unless and until Plaintiff timely files a fully complete application
3 to proceed *in forma pauperis* with all three documents or pays the full \$402 filing fee.

4 **II. CONCLUSION**

5 For the foregoing reasons, IT IS ORDERED that Plaintiff's motion to excuse his
6 failure to pay the filing fee or file an application to proceed *in forma pauperis* (ECF No. 4)
7 is denied.

8 IT IS FURTHER ORDERED that the Clerk of the Court will send Plaintiff the
9 approved form application to proceed *in forma pauperis* by an inmate, as well as the
10 document entitled information and instructions for filing an *in forma pauperis* application.

11 IT IS FURTHER ORDERED that on or before **September 7, 2021**, Plaintiff will
12 either pay the full \$402 filing fee for a civil action (which includes the \$350 filing fee and
13 the \$52 administrative fee) or file with the Court:

14 (1) a completed **Application to Proceed in Forma Pauperis for Inmate** on this
15 Court's approved form (i.e. pages 1 through 3 of the form with the inmate's two
16 signatures on page 3),

17 (2) a **Financial Certificate** properly signed by both the inmate and a prison or jail
18 official (i.e. page 4 of this Court's approved form), and

19 (3) a copy of the **inmate's prison or jail trust fund account statement for the**
20 **previous six-month period.**

21 IT IS FURTHER ORDERED that, if Plaintiff does not file a fully complete
22 application to proceed *in forma pauperis* with all three documents or pay the full \$402
23 filing fee for a civil action on or before **September 7, 2021**, this case will be subject to
24 dismissal without prejudice for Plaintiff to refile the case with the Court, under a new case
25 number, when Plaintiff has all three documents needed to file a complete application to
26 proceed *in forma pauperis* or pays the full \$402 filing fee.

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1 IT IS FURTHER ORDERED that the Clerk of the Court will retain the complaint
2 (ECF No.1-1) but will not file it at this time.

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4 DATED: 7-9-2021



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6 UNITED STATES MAGISTRATE JUDGE
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